

Senate File 2235

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3087)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing a uniform mediation Act.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 5109SV 80
4 rh/pj/5

PAG LIN

1 1 Section 1. Section 13.14, subsection 2, Code 2003, is
1 2 amended to read as follows:
1 3 2. Confidentiality is also protected as provided in
1 4 section ~~679C.2~~ 679C.108.
1 5 Sec. 2. Section 22.7, subsection 37, Code Supplement 2003,
1 6 is amended to read as follows:
1 7 37. Mediation ~~documents~~ records as defined in section
1 8 ~~679C.1~~ 679C.102, except written mediation agreements that
1 9 resulted from a mediation which are signed on behalf of a
1 10 governing body. However, confidentiality of mediation
1 11 documents resulting from mediation conducted pursuant to
1 12 chapter 216 shall be governed by chapter 216.
1 13 Sec. 3. Section 216.15B, subsection 2, Code 2003, is
1 14 amended to read as follows:
1 15 2. If formal mediation is conducted by a mediator pursuant
1 16 to this section, the confidentiality of all mediation
1 17 communications and mediation documents is protected as
1 18 provided in section ~~679C.2~~ 679C.108.
1 19 Sec. 4. Section 654A.13, Code 2003, is amended to read as
1 20 follows:
1 21 654A.13 CONFIDENTIALITY.
1 22 If mediation is conducted pursuant to this chapter, the
1 23 confidentiality of all mediation communications and mediation
1 24 documents is protected as provided in section ~~679C.2~~ 679C.108.
1 25 Sec. 5. Section 679.12, Code 2003, is amended to read as
1 26 follows:
1 27 679.12 CONFIDENTIALITY.
1 28 If mediation is conducted pursuant to this chapter, the
1 29 confidentiality of all mediation communications and mediation
1 30 documents is protected as provided in section ~~679C.2~~ 679C.108.
1 31 Sec. 6. NEW SECTION. 679C.101 SHORT TITLE.
1 32 This chapter shall be known as the "Uniform Mediation Act".
1 33 Sec. 7. NEW SECTION. 679C.102 DEFINITIONS.
1 34 As used in this chapter, unless the context otherwise
1 35 requires:
2 1 1. "Mediation" means a process in which a mediator
2 2 facilitates communication and negotiation between parties to
2 3 assist them in reaching a voluntary agreement regarding their
2 4 dispute.
2 5 2. "Mediation communication" means a statement, whether
2 6 oral or in a record, verbal or nonverbal, that occurs during a
2 7 mediation or is made for purposes of considering, conducting,
2 8 participating in, initiating, continuing, or reconvening a
2 9 mediation or retaining a mediator.
2 10 3. "Mediation party" means an individual who participates
2 11 in a mediation and whose agreement is necessary to resolve the
2 12 dispute.
2 13 4. "Mediator" means an impartial individual who conducts a
2 14 mediation.
2 15 5. "Nonparty participant" means a person, other than a
2 16 mediation party or mediator, that participates in a mediation.
2 17 6. "Person" means an individual; corporation; business
2 18 trust; estate; trust; partnership; limited liability company;
2 19 association; joint venture; government; governmental
2 20 subdivision, agency, or instrumentality; public corporation;
2 21 or any other legal or commercial entity.
2 22 7. "Proceeding" means any of the following:
2 23 a. A judicial, administrative, arbitral, or other

2 24 adjudicative process, including related prehearing and
2 25 posthearing motions, conferences, and discovery.
2 26 b. A legislative hearing or similar process.
2 27 8. "Record" means information that is inscribed on a
2 28 tangible medium or that is stored in an electronic or other
2 29 medium and is retrievable in perceivable form.
2 30 9. "Sign" means any of the following:
2 31 a. To execute or adopt a tangible symbol with the present
2 32 intent to authenticate a record.
2 33 b. To attach or logically associate an electronic symbol,
2 34 sound, or process to or with a record with the present intent
2 35 to authenticate a record.

3 1 Sec. 8. NEW SECTION. 679C.103 SCOPE.
3 2 1. Except as otherwise provided for in subsections 2 and
3 3 3, this chapter applies to a mediation that occurs under any
3 4 of the following circumstances:
3 5 a. The mediation parties are required to mediate by
3 6 statute or court or administrative agency rule or referred to
3 7 mediation by a court, administrative agency, or arbitrator.
3 8 b. The mediation parties and the mediator agree to mediate
3 9 in a record that demonstrates an expectation that mediation
3 10 communications will be privileged against disclosure.
3 11 c. The mediation parties use as a mediator an individual
3 12 who holds oneself out as a mediator or the mediation is
3 13 provided by a person that holds itself out as providing
3 14 mediation.
3 15 2. This chapter shall not apply to a mediation relating to
3 16 or conducted by any of the following circumstances:
3 17 a. Relating to the establishment, negotiation,
3 18 administration, or termination of a collective bargaining
3 19 relationship.
3 20 b. Relating to a dispute that is pending under or is part
3 21 of the processes established by a collective bargaining
3 22 agreement, except that this chapter applies to a mediation
3 23 arising out of a dispute that has been filed with an
3 24 administrative agency or court.
3 25 c. Conducted by a judge who might make a ruling on the
3 26 case.
3 27 d. Conducted at any of the following:
3 28 (1) A primary or secondary school if all the parties are
3 29 students.
3 30 (2) A correctional institution for youths if all the
3 31 parties are residents of that institution.
3 32 3. If the mediation parties agree in advance in a signed
3 33 record, or a record of proceeding reflects agreement by the
3 34 mediation parties, that all or part of a mediation is not
3 35 privileged, the privileges under sections 679C.104 through
4 1 679C.106 do not apply to the mediation or part agreed upon.
4 2 However, sections 679C.104 through 679C.106 apply to a
4 3 mediation communication made by a person that has not received
4 4 actual notice of the agreement before the communication is
4 5 made.

4 6 Sec. 9. NEW SECTION. 679C.104 PRIVILEGE AGAINST
4 7 DISCLOSURE == ADMISSIBILITY == DISCOVERY.
4 8 1. Except as otherwise provided in section 679C.106, a
4 9 mediation communication is privileged as provided in
4 10 subsection 2 and is not subject to discovery or admissible in
4 11 evidence in a proceeding unless waived or precluded as
4 12 provided by section 679C.105.
4 13 2. In a proceeding, the following privileges shall apply:
4 14 a. A mediation party may refuse to disclose, and may
4 15 prevent any other person from disclosing, a mediation
4 16 communication.
4 17 b. A mediator may refuse to disclose a mediation
4 18 communication, and may prevent any other person from
4 19 disclosing a mediation communication of the mediator.
4 20 c. A nonparty participant may refuse to disclose, and may
4 21 prevent any other person from disclosing, a mediation
4 22 communication of the nonparty participant.
4 23 3. Evidence or information that is otherwise admissible or
4 24 subject to discovery does not become inadmissible or protected
4 25 from discovery solely by reason of its disclosure or use in a
4 26 mediation.

4 27 Sec. 10. NEW SECTION. 679C.105 WAIVER AND PRECLUSION OF
4 28 PRIVILEGE.
4 29 1. A privilege under section 679C.104 may be waived in a
4 30 record or orally during a proceeding if it is expressly waived
4 31 by all mediation parties and if all of the following apply:
4 32 a. In the case of the privilege of a mediator, the
4 33 privilege is expressly waived by the mediator.
4 34 b. In the case of the privilege of a nonparty participant,

4 35 the privilege is expressly waived by the nonparty participant.
5 1 2. A person that discloses or makes a representation about
5 2 a mediation communication which prejudices another person in a
5 3 proceeding is precluded from asserting a privilege under
5 4 section 679C.104, but only to the extent necessary for the
5 5 person prejudiced to respond to the disclosure or
5 6 representation.

5 7 3. A person that intentionally uses a mediation to plan,
5 8 to attempt to commit, or to commit a crime, or to conceal an
5 9 ongoing crime or ongoing criminal activity is precluded from
5 10 asserting a privilege pursuant to section 679C.104.

5 11 Sec. 11. NEW SECTION. 679C.106 EXCEPTIONS TO PRIVILEGE.

5 12 1. No privilege exists under section 679C.104 for a
5 13 mediation communication that involves any of the following:

5 14 a. An agreement evidenced by a record signed by all
5 15 mediation parties to the agreement.

5 16 b. A communication that is available to the public under
5 17 chapter 22 or made during a session of a mediation which is
5 18 open, or is required by law to be open, to the public.

5 19 c. A threat or statement of a plan to inflict bodily
5 20 injury or commit a crime of violence.

5 21 d. A plan to commit or attempt to commit a crime, the
5 22 commission of a crime, or activity to conceal an ongoing crime
5 23 or ongoing criminal activity.

5 24 e. A communication that is sought or offered to prove or
5 25 disprove a claim or complaint of professional misconduct or
5 26 malpractice filed against a mediator.

5 27 f. Except as otherwise provided in subsection 3, a
5 28 communication that is sought or offered to prove or disprove a
5 29 claim or complaint of professional misconduct or malpractice
5 30 filed against a mediation party, nonparty participant, or
5 31 representative of a mediation party based on conduct occurring
5 32 during a mediation.

5 33 g. A communication that is sought or offered to prove or
5 34 disprove abuse, neglect, abandonment, or exploitation in a
5 35 proceeding in which a child or adult protective services
6 1 agency is a party, unless the child or adult protection case
6 2 is referred by a court to mediation and a public agency
6 3 participates.

6 4 2. There is no privilege under section 679C.104 if a
6 5 court, administrative agency, or arbitrator finds, after a
6 6 hearing in camera, that the party seeking discovery or the
6 7 proponent of the evidence has shown that the evidence is not
6 8 otherwise available, that there is a need for the evidence
6 9 that substantially outweighs the interest in protecting
6 10 confidentiality, and that the mediation communication is
6 11 sought or offered in any of the following situations:

6 12 a. A court proceeding involving a felony or misdemeanor.

6 13 b. Except as otherwise provided in subsection 3, a
6 14 proceeding to prove a claim to rescind or reform a contract or
6 15 a defense to avoid liability on a contract arising out of the
6 16 mediation.

6 17 3. A mediator shall not be compelled to provide evidence
6 18 of a mediation communication referred to in subsection 1,
6 19 paragraph "f", or subsection 2, paragraph "b".

6 20 4. If a mediation communication is not privileged under
6 21 subsection 1 or 2, only the portion of the communication
6 22 necessary for the application of the exception from
6 23 nondisclosure may be admitted. Admission of evidence under
6 24 subsection 1 or 2 does not render the evidence, or any other
6 25 mediation communication, discoverable or admissible for any
6 26 other purpose.

6 27 Sec. 12. NEW SECTION. 679C.107 PROHIBITED MEDIATOR
6 28 REPORTS.

6 29 1. Except as required in subsection 2, a mediator shall
6 30 not make a report, assessment, evaluation, recommendation,
6 31 finding, or other communication regarding a mediation to a
6 32 court, administrative agency, or other authority that may make
6 33 a ruling on the dispute that is the subject of the mediation.

6 34 2. A mediator may disclose any of the following:

6 35 a. Whether the mediation occurred or has terminated,
7 1 whether a settlement was reached, and attendance.

7 2 b. A mediation communication as permitted under section
7 3 679C.106.

7 4 c. A mediation communication evidencing abuse, neglect,
7 5 abandonment, or exploitation of an individual to a public
7 6 agency responsible for protecting individuals against such
7 7 mistreatment.

7 8 3. A communication made in violation of subsection 1 shall
7 9 not be considered by a court, administrative agency, or
7 10 arbitrator.

7 11 Sec. 13. NEW SECTION. 679C.108 CONFIDENTIALITY.
7 12 Unless subject to chapter 21 or 22, mediation
7 13 communications are confidential to the extent agreed to by the
7 14 parties or provided by other law or rule of this state.
7 15 Sec. 14. NEW SECTION. 679C.109 MEDIATOR'S DISCLOSURE OF
7 16 CONFLICTS OF INTEREST == BACKGROUND.
7 17 1. Before accepting a mediation, an individual who is
7 18 requested to serve as a mediator shall do all of the
7 19 following:
7 20 a. Make an inquiry that is reasonable under the
7 21 circumstances to determine whether there are any known facts
7 22 that a reasonable individual would consider likely to affect
7 23 the impartiality of the mediator, including a financial or
7 24 personal interest in the outcome of the mediation and an
7 25 existing or past relationship with a mediation party or
7 26 foreseeable participant in the mediation.
7 27 b. Disclose any such known fact to the mediation parties
7 28 as soon as is practical before accepting a mediation.
7 29 2. If a mediator learns any fact described in subsection 1
7 30 after accepting a mediation, the mediator shall disclose it as
7 31 soon as is practicable.
7 32 3. At the request of a mediation party, an individual who
7 33 is requested to serve as a mediator shall disclose the
7 34 mediator's qualifications to mediate a dispute.
7 35 4. A person that violates subsection 1, 2, or 7 is
8 1 precluded by the violation from asserting a privilege under
8 2 section 679C.104.
8 3 5. Subsections 1, 2, 3, and 7 do not apply to an
8 4 individual acting as a judge.
8 5 6. This chapter does not require that a mediator have a
8 6 special qualification by background or profession.
8 7 7. A mediator must be impartial, unless after disclosure
8 8 of the facts required in subsections 1, 2, and 3 to be
8 9 disclosed, the parties agree otherwise.
8 10 Sec. 15. NEW SECTION. 679C.110 PARTICIPATION IN
8 11 MEDIATION.
8 12 An attorney or other individual designated by a mediation
8 13 party may accompany the mediation party to and participate in
8 14 a mediation. A waiver of participation given before the
8 15 mediation may be rescinded.
8 16 Sec. 16. NEW SECTION. 679C.111 RELATION TO ELECTRONIC
8 17 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.
8 18 The provisions of this chapter modify or supersede the
8 19 federal Electronic Signatures in Global and National Commerce
8 20 Act, 15 U.S.C. } 7001 et seq., but this chapter does not
8 21 modify, limit, or supersede section 101c of that Act or
8 22 authorize electronic delivery of any of the notices described
8 23 in section 103b of that Act.
8 24 Sec. 17. NEW SECTION. 679C.112 UNIFORMITY OF APPLICATION
8 25 AND CONSTRUCTION.
8 26 In applying and construing this chapter, consideration
8 27 should be given to the need to promote uniformity of the law
8 28 among states that enact the uniform mediation Act.
8 29 Sec. 18. NEW SECTION. 679C.113 SEVERABILITY CLAUSE.
8 30 If any provision of this chapter or the application thereof
8 31 to any person or circumstance is held invalid, the invalidity
8 32 shall not affect other provisions or applications of this
8 33 chapter which can be given effect without the invalid
8 34 provision or application, and to this end, the provisions of
8 35 this chapter are severable.
9 1 Sec. 19. NEW SECTION. 679C.114 APPLICATION TO EXISTING
9 2 AGREEMENTS OR REFERRALS.
9 3 1. This chapter governs a mediation pursuant to a referral
9 4 or an agreement to mediate made on or after July 1, 2004.
9 5 2. On or after July 1, 2004, this chapter governs an
9 6 agreement to mediate whenever made.
9 7 Sec. 20. NEW SECTION. 679C.115 MEDIATOR IMMUNITY.
9 8 A mediator or a mediation program shall not be liable for
9 9 civil damages for a statement, decision, or omission made in
9 10 the process of mediation unless the act or omission by the
9 11 mediator or mediation program is made in bad faith, with
9 12 malicious purpose, or in a manner exhibiting willful or wanton
9 13 disregard of human rights, safety, or property. This section
9 14 shall apply to mediation conducted before the workers'
9 15 compensation commissioner and mediation conducted pursuant to
9 16 chapter 216.
9 17 Sec. 21. Chapter 679C, Code 2003, is repealed.
9 18 SF 2235
9 19 rh/cc/26